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REMARKS

The Examiner has rejected Claims 1-10 under 35 U.S.C. 101 as being directed toward non-statutory subject matter. Applicant has clarified Claim 1 to include a computer program product "embodied on a tangible computer readable medium" in order to avoid such rejection.

The Examiner has rejected Claims 1-5, 11-15 and 21-25 under 35 U.S.C. 103(a) as being unpatentable over Hodges et al. (U.S. Patent No. 6,035,423) in view of Reber et al. (U.S. Patent No. 6,484,943). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims. Specifically, applicant has amended each of the independent claims to at least substantially include the subject matter of Claim 2 et al.

With respect to each of the independent claims, the Examiner has relied on Figure 2 along with the following excerpt from Reber to make a prior art showing of applicant's claimed "establishing code operable in dependence upon said priority data to establish a plurality of groups of destination computers such that destination computers within a group of destination computers share a common priority level" (see the same or similar, but not identical language in each of the independent claims).

"For purposes of illustration and example, the computer-readable medium 20 comprises computer-readable data 22 which associates a bar code data element 24 with a priority level 26 and a computer address 30, a bar code data element 32 with a priority level 34 and a computer address 36, a bar code data element 40 with a priority level 42 and a computer address 44, and a bar code data element 46 with a priority level 50 and a computer address 52. Typically, the computer-readable medium 20 embodies computer-readable data associating a multiplicity of bar code data elements (i.e. many more than four) with a multiplicity of respective priority levels and a multiplicity of respective computer addresses.

Also for purposes of illustration and example, consider the priority levels 26 and 42 to be the same, the priority levels 34 and 50 to be the same, and the priority levels 26 and 42 to differ from the priority levels 34 and 50. Although only two different priority levels are illustrated, it is noted that the

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Applicant respectfully asserts that such excerpt simply teaches each bar code data element being associated with a priority level (see emphasized excerpt above). Furthermore, Reber discloses that priority levels may be the same or different for multiple bar code data elements and that any plurality of different priority levels may be used (see emphasized excerpt above). However, applicant notes that nowhere in such excerpt does Reber teach "establish[ing] a plurality of groups of destination computers [in dependence upon said priority data] such that destination computers within a group of destination computers share a common priority level" as claimed by applicant (emphasis added).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has at least substantially incorporated the subject matter of Claim 2 et al. into each of the independent claims.

With respect to the subject matter of Claim 2 et al., as presently incorporated into each of the independent claims, the Examiner has relied on the Abstract, Figures 1-12 and

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Col. 4, lines 45-59 in Hodges to make a prior art showing of applicant's claimed technique "wherein said source computer transfers said updated data to a group of destination computers using multicast messages that are addressed to substantially all destination computers within said group of destination computers."

Applicant respectfully asserts that Hodges only teaches an "automatic installation script [that] is executed to install the antivirus updates on the client computers" (see Abstract). Hodges further teaches that the "central antivirus server comprises a first database containing information related to the latest antivirus software updates contained on each local client computer, and uses push technology to transmit updated antivirus files if the local client computer's antivirus files are out of date" (see Col. 4, lines 45-59). Clearly, Hodges only generally teaches updating antivirus files on client computers, but completely fails to even mention any sort of "group of destination computers," let alone transferring "said updated data to a group of destination computers using multicast messages that are addressed to substantially all destination computers within said group of destination computers," as claimed by applicant (emphasis added).

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Applicant further notes that the prior art is also deficient with respect to the dependent claims.

Just by way of example, with respect to Claim 3 et al., the Examiner has relied on Figures 1-12 in Hodges to make a prior art showing of applicant's claimed technique "wherein said computer network uses an IP transmission protocol and said multicast messages are IP multicast messages." The Examiner has specifically argued that Hodges teaches that updates are pushed based on IP addresses. Applicant respectfully asserts that simply because updates are pushed based on IP address does not inherently mean that they are multicast, as claimed by applicant. In fact, applicant notes that Figure 6 in Hodges shows updated virus signatures being transferred to a single IP address, which

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would not require a utilization of multicast messages, as specifically claimed by applicant.

With respect to Claim 6 et al., currently rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Reber in further view of Dennis et al. (U.S. Patent No. 6,466,932), the Examiner has relied on Col. 13, lines 32-35 in Dennis to make a prior art showing of applicant's claimed technique "wherein, if any group of destination computers includes more than a threshold number of destination computers sharing a common priority level, then said establishing code is operable to split said group to form a plurality of groups of destination computers from said destination computers sharing a common priority level and said ordering code is operable to order corresponding push update tasks to occur sequentially despite sharing said common priority level."

Applicant respectfully asserts that nowhere in the excerpt relied on by the Examiner is there any disclosure of a threshold or of ordering push update tasks for groups sharing a common priority level, in the manner claimed by applicant. Applicant notes that Dennis only teaches that a "policy may be enforced for certain users and suggested for other users by splitting a groups policies into two groups." Clearly such teaching from Dennis does not meet applicant's specific claim language, namely "wherein, if any group of destination computers includes more than a threshold number of destination computers sharing a common priority level, then said establishing code is operable to split said group to form a plurality of groups of destination computers from said destination computers sharing a common priority level and said ordering code is operable to order corresponding push update tasks to occur sequentially despite sharing said common priority level" (emphasis added).

With respect to Claim 7 et al., currently rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Reber in further view of Dennis et al. (U.S. Patent No. 6,466,932), the Examiner has relied on Col. 13, lines 32-35 in Dennis to make a prior art showing of applicant's claimed "wherein said splitting allocates

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destination computers sharing a common network portion of said computer network to a common group." Applicant respectfully asserts that nowhere in such excerpt is there any disclosure of splitting groups according to "destination computers <u>sharing a common network portion</u> of said computer network," in the context claimed by applicant (emphasis added). Instead, Dennis only teaches that a "policy may be enforced for certain users and suggested for other users by splitting a groups policies into two groups."

With respect to Claim 8 et al., currently rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Reber in further view of Dennis et al. (U.S. Patent No. 6,466,932), the Examiner has relied on Figure 2 and Col. 2, lines 45-64 in Reber to make a prior art showing of applicant's claimed technique "wherein within said group of destination computers sharing a common priority level and being split, destination computers connected and not logged into said computer network are grouped together and split from and treated as having a lower priority level than destination computers connected and logged into said computer network."

Specifically, the Examiner has argued that Reber teaches that certain computers are assigned different priority. Applicant respectfully asserts that clearly such teaching does not even suggest "destination <u>computers [that are] connected and not logged into said computer network are grouped together</u> and split from and treated as having a <u>lower priority level</u> than destination computers connected and logged into said computer network," as specifically claimed by applicant (emphasis added).

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest <u>all</u> of the claim limitations, as noted above. A notice of allowance or a proper prior art showing of <u>all</u> of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 31-32 below, which are added for full consideration:

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"wherein said multicast messages that are addressed to said destination computers within said group of destination computers include a shared push update task" (see Claim 30); and

"wherein each destination computer stores said priority data thereof specifying said priority level associated with said destination computer and communicates said priority data thereof with said source computer in response to a first connection with said source computer" (see Claim 31).

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P483/01.130.01).

Respectfully submitted,
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